

104TH CONGRESS
1ST SESSION

H. R. 1038

To revise and streamline the acquisition laws of the Federal Government,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1995

Mr. CLINGER (for himself, Mr. SPENCE, and Mr. GILMAN) introduced the following bill; which was referred to the Committee on Government Reform and Oversight and, in addition, to the Committees on National Security, International Relations, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To revise and streamline the acquisition laws of the Federal
Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Reform Act of 1995”.

1 **SEC. 2. PROCUREMENT INTEGRITY AMENDMENT.**

2 (a) AMENDMENT OF PROCUREMENT INTEGRITY PRO-
3 VISION.—Section 27 of the Office of Federal Procurement
4 Policy Act (41 U.S.C. 423) is amended to read as follows:

5 **“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING**
6 **CONTRACTOR BID OR PROPOSAL INFORMA-**
7 **TION OR SOURCE SELECTION INFORMATION.**

8 “(a) PROHIBITION ON DISCLOSING PROCUREMENT
9 INFORMATION.—(1) A person described in paragraph (2)
10 shall not, other than as provided by law, knowingly and
11 willfully disclose contractor bid or proposal information or
12 source selection information before the award of a Federal
13 agency procurement contract to which the information re-
14 lates.

15 “(2) Paragraph (1) applies to any person who—

16 “(A) is a present or former officer or employee
17 of the United States, or a person who is acting or
18 has acted for or on behalf of, or who is advising or
19 has advised the United States with respect to, a
20 Federal agency procurement; and

21 “(B) by virtue of that office, employment, or re-
22 lationship has or had access to contractor bid or pro-
23 posal information or source selection information.

24 “(b) PROHIBITION ON OBTAINING PROCUREMENT
25 INFORMATION.—A person shall not, other than as pro-
26 vided by law, knowingly and willfully obtain contractor bid

1 or proposal information or source selection information be-
2 fore the award of a Federal agency procurement contract
3 to which the information relates.

4 “(c) PROHIBITION ON DISCLOSING OR OBTAINING
5 PROCUREMENT INFORMATION IN CONNECTION WITH A
6 PROTEST.—(1) A person shall not, other than as provided
7 by law, knowingly and willfully violate the terms of a pro-
8 tective order described in paragraph (2) by disclosing or
9 obtaining contractor bid or proposal information or source
10 selection information related to the procurement contract
11 concerned.

12 “(2) Paragraph (1) applies to any protective order
13 issued by the Comptroller General or the board of contract
14 appeals of the General Services Administration in connec-
15 tion with a protest against the award or proposed award
16 of a Federal agency procurement contract.

17 “(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

18 “(1) CRIMINAL PENALTIES.—

19 “(A) Whoever engages in conduct con-
20 stituting an offense under subsection (a), (b),
21 or (c) shall be imprisoned for not more than
22 one year or fined as provided under title 18,
23 United States Code, or both.

1 “(B) Whoever engages in conduct con-
2 stituting an offense under subsection (a), (b),
3 or (c) for the purpose of either—

4 “(i) exchanging the information cov-
5 ered by such subsection for anything of
6 value, or

7 “(ii) obtaining or giving anyone a
8 competitive advantage in the award of a
9 Federal agency procurement contract,

10 shall be imprisoned for not more than five years
11 or fined as provided under title 18, United
12 States Code, or both.

13 “(2) CIVIL PENALTIES.—The Attorney General
14 may bring a civil action in the appropriate United
15 States district court against any person who engages
16 in conduct constituting an offense under subsection
17 (a), (b), or (c). Upon proof of such conduct by a
18 preponderance of the evidence, the person is subject
19 to a civil penalty. An individual who engages in such
20 conduct is subject to a civil penalty of not more than
21 \$50,000 for each violation plus twice the amount of
22 compensation which the individual received or of-
23 fered for the prohibited conduct. An organization
24 that engages in such conduct is subject to a civil
25 penalty of not more than \$500,000 for each violation

1 plus twice the amount of compensation which the or-
2 ganization received or offered for the prohibited con-
3 duct.

4 “(3) ADMINISTRATIVE ACTIONS.—(A) If a Fed-
5 eral agency receives information that a contractor or
6 a person has engaged in conduct constituting an of-
7 fense under subsection (a), (b), or (c), the Federal
8 agency shall consider taking one or more of the fol-
9 lowing actions, as appropriate:

10 “(i) Cancellation of the Federal agency
11 procurement, if a contract has not yet been
12 awarded.

13 “(ii) Rescission of a contract with respect
14 to which—

15 “(I) the contractor or someone acting
16 for the contractor has been convicted for
17 an offense under subsection (a), (b), or (c),
18 or

19 “(II) the head of the agency that
20 awarded the contract has determined,
21 based upon clear and convincing evidence,
22 that the contractor or someone acting for
23 the contractor has engaged in conduct con-
24 stituting such an offense.

1 “(iii) Initiation of suspension or debarment
2 proceedings for the protection of the Govern-
3 ment in accordance with procedures in the Fed-
4 eral Acquisition Regulation.

5 “(iv) Initiation of adverse personnel action,
6 pursuant to the procedures in chapter 75 of
7 title 5, United States Code, or other applicable
8 law or regulation.

9 “(B) If a Federal agency rescinds a contract
10 pursuant to subparagraph (A)(ii), the United States
11 is entitled to recover, in addition to any penalty pre-
12 scribed by law, the amount expended under the con-
13 tract.

14 “(C) For purposes of any suspension or debar-
15 ment proceedings initiated pursuant to subpara-
16 graph (A)(iii), engaging in conduct constituting an
17 offense under subsection (a), (b), or (c) affects the
18 present responsibility of a Government contractor or
19 subcontractor.

20 “(e) DEFINITIONS.—As used in this section:

21 “(1) The term ‘contractor bid or proposal infor-
22 mation’ means any of the following information sub-
23 mitted to a Federal agency as part of or in connec-
24 tion with a bid or proposal to enter into a Federal
25 agency procurement contract, if that information has

1 not been previously made available to the public or
2 disclosed publicly:

3 “(A) Cost or pricing data (as defined by
4 section 2306a(i) of title 10, United States
5 Code, with respect to procurements subject to
6 that section, and section 304A(i) of Federal
7 Property and Administrative Services Act of
8 1949 (41 U.S.C. 254b(i), with respect to pro-
9 curements subject to that section).

10 “(B) Indirect costs and direct labor rates.

11 “(C) Proprietary information about manu-
12 facturing processes, operations, or techniques
13 marked by the contractor in accordance with
14 applicable law or regulation.

15 “(D) Information marked by the contrac-
16 tor as ‘contractor bid or proposal information’,
17 in accordance with applicable law or regulation.

18 “(2) The term ‘source selection information’
19 means any of the following information prepared for
20 use by a Federal agency for the purpose of evaluat-
21 ing a bid or proposal to enter into a Federal agency
22 procurement contract, if that information has not
23 been previously made available to the public or dis-
24 closed publicly:

1 “(A) Bid prices submitted in response to a
2 Federal agency solicitation for sealed bids, or
3 lists of those bid prices before public bid open-
4 ing.

5 “(B) Proposed costs or prices submitted in
6 response to a Federal agency solicitation, or
7 lists of those proposed costs or prices.

8 “(C) Source selection plans.

9 “(D) Technical evaluation plans.

10 “(E) Technical evaluations of proposals.

11 “(F) Cost or price evaluations of propos-
12 als.

13 “(G) Competitive range determinations
14 that identify proposals that have a reasonable
15 chance of being selected for award of a con-
16 tract.

17 “(H) Rankings of bids, proposals, or com-
18 petitors.

19 “(I) The reports and evaluations of source
20 selection panels, boards, or advisory councils.

21 “(J) Other information marked as ‘source
22 selection information’ based on a case-by-case
23 determination by the head of the agency, his
24 designee, or the contracting officer that its dis-
25 closure would jeopardize the integrity or suc-

1 successful completion of the Federal agency pro-
2 curement to which the information relates.

3 “(3) The term ‘Federal agency’ has the mean-
4 ing provided such term in section 3 of the Federal
5 Property and Administrative Services Act of 1949
6 (40 U.S.C. 472).

7 “(4) The term ‘Federal agency procurement’
8 means the acquisition (by using competitive proce-
9 dures and awarding a contract) of goods or services
10 (including construction) from non-Federal sources
11 by a Federal agency using appropriated funds.

12 “(5) The term ‘contracting officer’ means a
13 person who, by appointment in accordance with ap-
14 plicable regulations, has the authority to enter into
15 a Federal agency procurement contract on behalf of
16 the Government and to make determinations and
17 findings with respect to such a contract.

18 “(6) The term ‘protest’ means a written objec-
19 tion by an interested party to the award or proposed
20 award of a Federal agency procurement contract,
21 pursuant to section 111 of the Federal Property and
22 Administrative Services Act of 1949 (40 U.S.C. 759)
23 or subchapter V of chapter 35 of title 31, United
24 States Code.

1 “(f) LIMITATION ON PROTESTS.—No person may file
2 a protest against the award or proposed award of a Fed-
3 eral agency procurement contract alleging an offense
4 under subsection (a), (b), or (c), of this section, nor may
5 the Comptroller General or the board of contract appeals
6 of the General Services Administration consider such an
7 allegation in deciding a protest, unless that person re-
8 ported to the Federal agency responsible for the procure-
9 ment information that the person believed constituted evi-
10 dence of the offense no later than 14 days after the person
11 first discovered the possible offense.

12 “(g) SAVINGS PROVISIONS.—This section does not—

13 “(1) restrict the disclosure of information to, or
14 its receipt by, any person or class of persons author-
15 ized, in accordance with applicable agency regula-
16 tions or procedures, to receive that information;

17 “(2) restrict a contractor from disclosing its
18 own bid or proposal information or the recipient
19 from receiving that information;

20 “(3) restrict the disclosure or receipt of infor-
21 mation relating to a Federal agency procurement
22 after it has been canceled by the Federal agency be-
23 fore contract award unless the Federal agency plans
24 to resume the procurement;

1 “(4) authorize the withholding of information
2 from, nor restrict its receipt by, Congress, a commit-
3 tee or subcommittee of Congress, the Comptroller
4 General, a Federal agency, or an inspector general
5 of a Federal agency;

6 “(5) authorize the withholding of information
7 from, nor restrict its receipt by, any board of con-
8 tract appeals of a Federal agency or the Comptroller
9 General in the course of a protest against the award
10 or proposed award of a Federal agency procurement
11 contract; or

12 “(6) limit the applicability of any requirements,
13 sanctions, contract penalties, and remedies estab-
14 lished under any other law or regulation.”.

15 (b) REGULATIONS.—(1) Proposed revisions to the
16 Federal Acquisition Regulation to implement this section
17 shall be published in the Federal Register not later than
18 60 days after the date of the enactment of this Act.

19 (2) The proposed regulations described in paragraph
20 (1) shall be made available for public comment for a pe-
21 riod of not less than 60 days.

22 (3) Final regulations shall be published in the Fed-
23 eral Register not later than 150 days after the date of
24 the enactment of this Act.

1 (c) REPEALS.—(1) The following provisions of law
2 are repealed:

3 (A) Sections 2397, 2397a, 2397b, and 2397c of
4 title 10, United States Code.

5 (B) Section 281 of title 18, United States Code.

6 (C) Subsection (c) of section 32 of the Office of
7 Federal Procurement Policy Act (41 U.S.C. 428).

8 (2)(A) The table of sections at the beginning of chap-
9 ter 141 of title 10, United States Code, is amended by
10 striking the items relating to sections 2397, 2397a, 2397b,
11 and 2397c.

12 (B) The table of sections at the beginning of chapter
13 15 of title 18, United States Code, is amended by striking
14 the item relating to section 281.

15 (C) Section 32 of the Office of Federal Procurement
16 Policy Act (41 U.S.C. 428) is amended by redesignating
17 subsections (d), (e), (f), and (g) as subsections (c), (d),
18 (e), and (f), respectively.

19 **SEC. 3. INTERNATIONAL COMPETITIVENESS.**

20 (a) REPEAL OF PROVISION RELATING TO RESEARCH,
21 DEVELOPMENT, AND PRODUCTION COSTS.—Section 21(e)
22 of the Arms Export Control Act (22 U.S.C. 2761(e)) is
23 amended—

24 (1) by inserting “and” after the semicolon at
25 the end of paragraph (1)(A);

1 (2) by striking out subparagraph (B) of para-
2 graph (1);

3 (3) by redesignating subparagraph (C) of para-
4 graph (1) as subparagraph (B);

5 (4) by striking out paragraph (2); and

6 (5) by redesignating paragraph (3) as para-
7 graph (2).

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall be effective with respect to sales agree-
10 ments pursuant to sections 21 and 22 of the Arms Export
11 Control Act (22 U.S.C. 2761 and 2762) entered into on
12 or after the date of the enactment of this Act.

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